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August 26, 2013

Honorable Viktor V. Pohorelsky
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *In re Air Cargo Shipping Services Litigation*, 06-MD-1775 (JG)(VVP)

Dear Magistrate Judge Pohorelsky:

On behalf of undersigned defendants, please find enclosed a copy of the United States Court of Appeals for the District of Columbia Circuit's August 9, 2013 decision in *In re Rail Freight Fuel Surcharge Antitrust Litigation*, No. 12-7085 (D.C. Cir. August 9, 2013).

Plaintiffs relied heavily on the decision below, *In re Rail Freight Surcharge Antitrust Litig.*, No. 07-489, 2012 WL 4127623 (D.D.C. Sept. 20, 2012), in their Reply Memorandum of Law in Further Support of Their Motion for Class Certification and Appointment of Class Counsel (see, for example, Table of Authorities, describing the lower court's opinion as cited "passim") (ECF No. 1753). However, the D.C. Circuit has now vacated the district court's class certification decision and remanded the case for further consideration.

The D.C. Circuit's opinion is supplemental authority pertinent to the following issues that defendants raised in their Joint Memorandum of Law in Opposition to Plaintiffs' Motion for Class Certification and Appointment of Class Counsel (ECF No. 1689) and Defendants' Joint Sur-Reply in Opposition to Plaintiffs' Motion for Class Certification and Appointment of Class Counsel (ECF No. 1845):

1. Whether plaintiffs' methodology constitutes reliable common proof of impact to the class when it cannot accommodate evidence that some class members did not pay overcharges as a result of the alleged conspiracy and thus generates "false positives";
2. Whether plaintiffs' damages model that assigns the same overcharge to all class members in the face of admissions of plaintiffs' experts that the amount of the

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allegedly conspiratorial imposed surcharges varies can constitute reliable common evidence of damages to the class.

Respectfully submitted,

/s/ Margaret. M. Zwisler

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I, Margaret M. Zwisler, certify that on August 26, 2013 I caused a true and correct copy of the foregoing to be served via the Court's ECF system upon all counsel registered for ECF in this case.

/s/ Margaret M. Zwisler

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